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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 12th January 2011

No. 405—li/1(B)-93/2002-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 7th December 2010 in Industrial Dispute Case No. 123 of 2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the Executive Engineer, Naraj Barrage Division No. I, Gandarpur, Cuttack and its Workman Shri Anand Chandra Nandi and 2 others represented through the M.B.B. and C.G.I.P. Employees Union, Gandarpur, Cuttack was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 123 OF 2002

The 7th December 2010

Present :

Shri S. K. Dash,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of Executive Engineer, . . . First Party—Management
Naraj Barrage Division No. I, Gandarpur, Cuttack.

And

Their workmen Shri Anand Chandra Nandi . . . Second Party—Workmen
and 2 others represented through the
M.B.B. and C.G.I.P. Employees Union,
Gandarpur, Cuttack.

Appearances :

For the First Party—Management	. . . Shri G. Senatapati, Assistant Engineer
For the Second Party—Workmen	. . . Shri C. Mohapatra, General Secretary

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court vide their Order No. 14173—li/1 (B)-93/2002-LE., dated the 5th December 2002 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Anand Chandra Nandi, Debendra Kumar Mohanty and Mahendra Behera, N.M.R. Gauge Reader by the Executive Engineer, Naraj Barrage Division No. I with effect from the 1st December 2001 is legal and/or justified ? If not, to what relief are the above named workmen entitled ?”

3. The case of the workmen in brief is that they were initially appointed as N.M.R. Mate with effect from the 1st December 1988 and continued as such till the 28th August 1991. Thereafter as per Memo. No. 1143, dated the 29th August 1991 of the Assistant Engineer, Mahanadi Barrage Subdivision No. III, Cuttack, they were directed to work as N.M.R. Gauge Reader and accordingly they joined as such. The grade and scale of pay of N.M.R. Mate and N.M.R. Gauge Reader remain same, but the nature of work is different. As per office Order No. 108, dated the 26th June 2001 of the Superintending Engineer, Naraj Barrage Circle, the designation of the above named workmen were changed from N.M.R. Mate and N.M.R. Gauge Reader which was confirmed the order of the Assistant Engineer. After issue of the redesignation orders of the workmen, their seniority list was to be prepared as N.M.R. Gauge Reader which has not been done. As per Order No. 9911, dated the 19th March 1999 of the Department of Water Resources, each Circle is a separate unit and accordingly the seniority list should be prepared by the N.B. Circle separately. But the Superintending Engineer, M.C.I.I. Circle, Cuttack issued a surplus list and instructed the concerned Executive Engineer to issue retrenchment notice and accordingly the workmen were retrenched with effect from the 1st December 2001 which is beyond his jurisdiction. Therefore, they raised an industrial dispute through the Union before the Labour Authority and when the conciliation failed, the matter was referred to the Government and the reference was received from the Government and this I.D. Case has been initiated wherein the workmen have prayed for their reinstatement in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workmen. According to the management, 80 numbers of different category of workmen belonging to Mahanadi Barrage Subdivisions No. I and III under Mahanadi Barrage Division, Cuttack have been transferred to the control of the management including the present workmen in the capacity of Mate by the Chief Engineer, Naraj and Chitotpala Project. So the claim of the workmen as Gauge Reader has no meaning at all. The gauge reading is one among the different nature of works which are entrusted to a Mate. Therefore, the workmen engaged in the capacity of Mate cannot claim as a Gauge Reader on any other category. The present workmen along with others might have represented their claim before the authority for change of their designation from Mate to Gauge Reader and accordingly the Superintending Engineer, Naraj Barrage Circle, Cuttack has accepted their demand in the manner that “the following N.M.R. Mates are allowed to perform their duties of N.M.R. Gauge Reader under the existing category”. The above order of the Superintending

Engineer, Naraj Barrage Circle in no way accepted the demand for change of designation. The workmen Mate falls under the category of semi-skilled engaged on daily wage basis. Under the said category, there are 30 different types of jobs wherein the claimed designation Gauge Reader does not exist. The management had received provisional seniority list forwarded by the Superintending Engineer, Naraj Barrage Circle with the instruction to verify the correctness against the particulars of the individuals. In the said list under the category of Mate the names of the present workmen found place. On receipt of the same, it was forwarded to all the subdivisinal officers under the management for proper verification regarding correctness of entries against all individuals of all N.M.R./D.L.R. personnel working under their control. After due verification, the fact was intimated to the Superintending Engineer. Neither the workmen nor their Union have put any complain as regards to their position in the provisional gradation list of 152 numbers of Mates. On account of non-receipt of any complaint, the provisional list after due correction was finalised by the Superintending Engineer. The surplus list was duly finalised by the Superintending Engineer, Mahanadi Chitrotpala Island Irrigation Circle, Cuttack has been communicated to the management with the instruction for effecting retrenchment of 41 Nos. of Mates under N.M.R. with effect from the 20th November 2001. Accordingly, retrenchment notices against the workmen and others has been issued and it was published in two leading Oriya daily. Out of the three workmen, Shri Debendra Kumar Mohanty and Shri Mahendra Behera have already received Rs. 21,009 and Rs. 16, 463 respectively towards full and final settlement of their retrenchment benefits including gratuity, etc. The dues of the workman Shri Anand Chandra Nandi for Rs. 21,009 is outstanding for disbursement. The retrenchment of the workmen being found surplus is genuine and justified and therefore the management has prayed for answering the reference in negative.

5. In view of the above pleadings of the parties, the following issues have been settled :—

ISSUES

- (i) "Whether the termination of services of Shri Anand Chandra Nandi, Shri Debendra Kumar Mohanty and Shri Mahendra Behera, N.M.R. Gauge Reader, by the Executive Engineer, Naraj Barrage Division No. I with effect from the 1st December 2001 is legal and/or justified ?
- (ii) If not, what relief are the above named workmen entitled to ?"

6. In order to substantiate the same, the workmen have examined themselves as W.Ws. 1 to 3. The workmen have proved the documents marks as Exts. 1 to 5. Similarly, the management has examined two witnesses altogether out of whom M.W. 1 is the Superintending Engineer and M.W. 2 is the Executive Engineer of the management. The management has also proved the documents marked as Exts. A to P.

FINDINGS

7. Issue Nos. (i) and (ii) — Both the issues are taken up together for discussion for convenience.

W.W. 1 deposes that he joined under the management as N.M.R. Mate on the 1st December 1988 and after two years, he became the Gauge Reader. He was working continuously till the date

of termination of his service but without giving any prior notice or notice pay and retrenchment compensation his service was terminated. His juniors namely, Dibakar Behera and others are still working under the management. In the cross-examination the management has put a suggestion that retrenchment compensation including gratuity were offered to him but he refused to accept the same. The workman has admitted that although he was appointed as a Gauge Reader, he continued to receive his salary as a N.M.R. Mate till the date of his retrenchment. W.W. 2 deposes that he joined as N.M.R. Mate on the 1st June 1991 at Mahanadi Barrage Division. He was assigned the work of Gauge Reader. He was getting daily wage of Rs. 42.50. He was retrenched from service on the 30th November 2001 and he has received the retrenchment compensation one year after his retrenchment from service. He also deposes that his juniors are still working under the management. Ext. 4 is the xerox copy of the seniority list. Exts. 4/a, 4/b and 4/c are the names of the workmen in such seniority list. W.W. 3 deposes that he joined as N.M.R. Mate on the 21st May 1989. He was assigned the work of Gauge Reader since the 15th June 1991. He was getting daily wage of Rs. 42.50. He was retrenched from service with effect from the 30th November 2001. His juniors are still working under the management as N.M.R. In the cross-examination this witness has admitted that he got his retrenchment benefits four months after his retrenchment. According to M.W. 1, the workmen claimed to prepare seniority list of N.M.R. Gauge Reader. The work of gauge reading is one among the different nature of works which are entrusted to a Mate. The workmen were initially engaged as N.M.R. Mate. The claim of the workmen that they have designated as Gauge Reader has no meaning because the change of any workmen's designation other than the category enumerated vide Labour & Employment Department Notification No. 5916, dated the 29th April 1999 is beyond the power of the Superintending Engineer and as per the said Notification the workmen Mate falls under the category of semi-skilled and there are 30 different types of jobs wherein the Gauge Reader as claimed does not exist.

8. Perused the documents marked by both the parties. Ext. 1 is the xerox copy of identity card in respect of workman Ananda Chandra Nandi wherein the designation has been mentioned as N.M.R. Mate Gauge Reader. Other two workmen have not filed their identity cards. However, M.W. 1 deposes that during flood or any alarming position, the Dam and Barrage sites are treated as prohibited area and no free entrance to the site are allowed for which the identity cards were issued to Mates for entering into prohibited area for taking gauge reading. So the plea of the workmen to be designated as Gauge Reader in view of the identity card is not at all correct. The seniority list has been duly prepared as per the category of the workman in view of the Notification of the Government. The gradation/seniority list was widely circulated among the staff and objection was invited and thereafter the gradation/seniority list was finalised by the authority on the 23rd November 2001. The xerox copy of the seniority list as on the 30th June 2001 has been marked as Ext. 4. As per the principle of Government the surplus staff has been retrenched on the basis of last come first go. This witness has admitted that Shri Anand Chandra Nandi refused to receive his dues and other two workmen have received the said benefits, but when they received the said benefits this witness remained silent. It further deposes that W.W. 1 re-engaged in the service but the name of other two workmen have not recommended for re-engagement. M.W. 2 is also deposed the same thing.

9. So in view of the above evidence the seniority list has been prepared after inviting objection. Nothing has been brought in the case record to show that the workmen have raised any objection to show that the work of gauge reading is a separate grade of that of N.M.R. Mate. However such list was finalised and published accordingly. So at this stage it cannot be disputed. As per the instruction of the Government while terminating the services of surplus staff due procedure of law as enumerated in the Industrial Disputes Act should be followed. But in the instant case from the materials available it shows that it was not duly followed. Complying of Section 25-F of the Industrial Disputes Act is a mandatory and precondition of retrenchment. But in the instant case as mentioned earlier two of the workmen have stated that they have received the retrenchment benefit much after their retrenchment and W.W. 1 has stated that he has not received the retrenchment benefit. Though the management has taken plea that W.W. 1 has refused to receive the retrenchment benefit, it is not at all proved. So the plea of the management cannot be believed. However, W.W. 1 has already been re-engaged in service by the management. All the workmen have deposed that their juniors are still in service. This fact has clearly been admitted by M.W. 2 in his cross-examination which reads as follows :

“It is a fact that junior of the workmen are continuing at present in service.”

So it is a clear violation of Section 25-G of the Industrial Disputes Act. M.W. 1 has stated that in case of Shri Biswajit Kumar Khatua and Shri Gyana Ranjan Mohapatra, a recommendation in respect of consideration of re-engagement was submitted to the proper authority and they have also been re-engaged being approved by the Government in D.O.W.R., Bhubaneswar. So it is also a clear violation of Section 25-H of the Industrial Disputes Act. So on careful consideration of all the materials available in the case record as discussed above, I am inclined to hold that the termination of services of all three workmen N.M.R. Mate working as Gauge Reader by the management with effect from the 1st December 2001 is neither legal nor justified. Regarding re-instatement as mentioned earlier the workman Shri Anand Chandra Nandi has already been re-engaged by the management. So other two workmen namely, Shri Debendra Kumar Mohanty and Shri Mahendra Behera are also entitled for reinstatement as N.M.R. Mate Gauge Reader.

9. Regarding back wages, it is settled principle of law that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. As per the settled principle of law reported in 2004 (Supp.) O.L.R. 694 when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. However, on careful consideration of all the materials as discussed above, I am of the opinion that a lump sum amount of Rs. 25,000 (Rupees twenty-five thousand) only in case of workman Shri Anand Chandra Nandi and Rs. 30,000 (Rupees thirty thousand) only each to other two workmen as compensation in lieu of back wages will meet the ends of justice in this case. The amount already received by the workmen as retrenchment benefit should be adjusted from the present amount if paid. Both the issues are answered accordingly.

10. Hence Ordered :

That the termination of services of Shri Ananda Chandra Nandi, Shri Debendra Kumar Mohanty and Shri Mahendra Behera, N.M.R. Mate Gauge Reader by the Executive Engineer, Naraj Barrage

Division No. I with effect from the 1st December 2001 is illegal and unjustified. The workmen Shri Debendra Kumar Mohanty and Shri Mahendra Behera are entitled to be re-instated in service. As the workman Shri Anand Chandra Nandi has already been re-engaged, he is entitled to get lump sum amount of Rs. 25,000 (Rupees twenty-five thousand) only as compensation in lieu of back wages. The other two workmen Shri Mohanty and Shri Behera are also entitled to get Rs. 30,000 (Rupees thirty thousand) only each as compensation in lieu of back wages after adjusting the retrenchment compensation if paid earlier. The management is directed to implement this Award within a period of one month from the date of its publication in the Official Gazette failing which the amount shall carry interest at the rate of 9% (nine per cent) per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
7-12-2010
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
7-12-2010
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
P. K. PANDA
Under-Secretary to Government